IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

COMPANY PETITION NO. 698 OF 2006

In the matter of Vardhaman Electronics Pvt. Ltd.

M/s. Khandwala Securities Limited. ... Petitioner.

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Mr. Vivek Kantavala with Vivek Sharma for the Petitioner.
Mr. Indraprakash Tripathi i/b. C.K. Tripathi for the Respondent.

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CORAM : DR. D.Y.CHANDRACHUD,J.

18th April 2007.

P.C. :

. The claim in the Company Petition arises out of a transaction under which an amount of Rs.3.14 crores was advanced by the Petitioner to the Respondent. The case of the Petitioner is that its Managing Director had friendly relations with a Director of the Respondent and the monies were advanced by way of Share Application Money.

2. In the affidavit in reply the defence is that the amount of Rs.3.14 crores was advanced by the Petitioner not by way of Share Application Money but to buy certain other shares. According to the

Respondent, the amount of Rs.29,704,191.46 was credited back by four cheques dated 27th March 2002 within a short span of 15 or 20 minutes from the time of deposit. According to the Respondent, Mr. Paresh Khandwala, a Director of the Petitioners had transactions in shares and securities using the account of the deponent to the reply and the accounts of his family members. In order to secure the account, as a result of loss sustained, the Director of the Petitioner is alleged to have transferred the amount in the name of the Respondent.

3. There is a serious dispute before the Court on the genuineness and authenticity of the alleged letters dated 28th May 2002 and 31st March 2004 alleged to have been addressed by the Respondent to the Petitioner. The first letter confirms the receipt of an amount of Rs.3.14 crores as Share Application Money while the second states that the amount will be duly refunded back. In the affidavit in reply dated 13th February 2007, the Respondent denies having issued any letter dated 28th May 2002 or of having confirmed its liability

under cover of the letter dated 31st March 2004 as alleged. The parties have therefore filed sur-rejoinders and sur-sur-rejoinders which prima-facie demonstrate the disputed nature of the transaction. According to the Petitioner, an amount of Rs.3.13 crores was in fact received from the Respondent but this was credited to the share trading account of the individual members comprising of the family of the Director of the Respondent. Whether this is so, would merit adjudication on the basis of evidence to be recorded at the trial of the suit. In a Company Petition for winding up, this Court wold not be justified in exercising its jurisdiction where the question whether there is a debt is seriously in dispute.

4. For all these reasons, it would be appropriate to dismiss the Company Petition, relegating the Petitioner to the remedy of a suit for the recovery of its dues. There shall accordingly be an order in the aforesaid terms.